

BOARD OF APPEALS CASE NO. 5523

\*

BEFORE THE

APPLICANTS: Benny & Jane Walker

\*

ZONING HEARING EXAMINER

REQUEST: Variance to permit an addition within  
the required 80 foot rear yard setback in the  
Agricultural District

\*

OF HARFORD COUNTY

\*

HEARING DATE: February 22, 2006

\*

\* \* \* \* \*

### ZONING HEARING EXAMINER'S DECISION

The Applicants, Benny C. Walker & L. Jane Walker, are requesting a variance, pursuant to Section 267-34C, Table II, of the Harford County Code, to encroach into the 80foot rear yard setback (60 feet proposed) in the AG Agricultural District.

The subject parcel is located at 908 Mount Soma Court, Fallston, Maryland 21047 in the Third Election District, and is more particularly identified on Tax Map 48, Grid 3D, Parcel 319, Lot 1. The parcel contains approximately 2.143 acres and is located in the LaVista Manor subdivision.

The Applicant, Mr. Benny C. Walker, appeared and testified that he and the Co-Applicant, L. Jane Walker, are the owners of the subject property. He stated that he had read the Department of Planning and Zoning Staff Report, and had no changes or corrections to the information contained therein except to note that his actual name is Benny, as opposed to Benjamin.

Mr. Walker described his property as a corner lot located at the intersection of Watervale Road and Mt. Soma Court. The lot is improved by a two story brick and frame home with an attached two car garage and an attached rear deck. The home is constructed near the far rear northeastern corner of the lot due to the required placement of a large septic reserve area in the front yard, and the well on the rear southwestern portion of the lot. The buildable area of the parcel was limited by the above constraints. As a result, the house had to be angled to meet minimum setback requirements.

The witness described several photographs, included in Attachment 9 to the Department of Planning and Zoning Staff Report. The top left photograph on Staff Report 9A shows the house's placement on an angle at the top of a hill. Watervale Road is depicted running across the bottom of the photograph. Mount Soma Court is shown running along the left side of the photograph from the bottom toward the middle of the picture.

## **Case No. 5523 – Benny & Jane Walker**

The Applicant stated that he and the Co-Applicant intend to convert the existing attached two car garage into a living space for his elderly mother. They are proposing to construct a new three car attached garage onto the side of the existing garage. According to the witness, one corner of the proposed garage would encroach 20 feet into the rear yard setback. Due to the placement of the house on an angle, only the back one-third of the proposed construction would encroach into the setback.

The witness did not introduce a blueprint or drawing of the proposed garage; however, he indicated that the Applicants propose to build a 41 foot by 26 foot three-car garage with a brick front and side. The existing garage has only siding. The new garage will also have a room and a dormer on the top floor. The proposed garage will be compatible with both the existing dwelling and with other homes in the neighborhood.

The witness further testified that the proposed garage would have no adverse impact on adjacent properties. Because his house is one of the smallest on the street, the proposed construction will bring it into conformity with other homes in the community. He believes that this would increase property values in the neighborhood. The witness further indicated that the proposed addition will be approximately 100 feet from the nearest dwelling. The Applicants plan to install landscaping to screen the garage from view of the adjoining property shown in the aerial photograph designated as Attachment 10 to the Department of Planning and Zoning Staff Report.

Mr. Anthony McClune, Deputy Director, Department of Planning and Zoning appeared and testified regarding the findings of fact and recommendations made by that agency. Mr. McClune stated that the Department investigated the request, and had visited both the property and surrounding neighborhood. According to Mr. McClune, the Department found the subject property to be unique, because the buildable area of the lot was severely reduced due to the required two front yard setbacks, the sloping topography, and the location of the well and septic reserve area.

The witness pointed out that the site plan (Staff Report Attachment 4) shows that the dwelling had to be placed on an angle due to these constraints. Had the house not been required to be constructed on an angle, the 70 foot side yard setback would actually have been the rear yard setback. Conversely, the 80 foot rear yard setback would normally have functioned as the property's side yard.

## **Case No. 5523 – Benny & Jane Walker**

Therefore, although the Applicants are technically requesting to reduce their rear yard setback from 80 feet to 60 feet, they are actually encroaching into the area that should function as their side yard setback. Side yard setbacks in the Agricultural District are only required to be 40 feet from the property line. If the house had been constructed straight with the front lot line, the Applicants would not have needed a variance in order to build the proposed addition.

Mr. McClune also testified that the granting of the proposed variance would not result in any adverse impact to adjoining properties because the home adjacent to the Applicant's property is actually built at the same angle. In addition, the outside wall of the proposed addition will still be 100 feet from the nearest dwelling at its closest point. The Department recommended approval of the subject request in its February 1, 2006 Staff Report subject to two conditions.

No witness appeared in opposition to the requested variance.

## **CONCLUSION:**

The Applicants, Benny C. Walker & L. Jane Walker, are requesting a variance, pursuant to Section 267-34C, Table II, of the Harford County Code, to encroach into the 80 foot rear yard setback (60 feet proposed) in the AG Agricultural District. The proposed addition would reduce the rear yard setback to 60 feet at its closest point. Harford County Code Section 267-34C, Table II: Design Requirements for Specific Uses in an Agricultural District provides for a minimum 80 foot rear yard depth.

Section 267-11 of the Harford County Code permits the granting of variances, stating:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

## **Case No. 5523 – Benny & Jane Walker**

The Maryland Court of Special Appeals set forth a two prong test for determining whether a variance should be granted in the case of *Cromwell v. Ward*, 102 Md. App. 691, (1995). This test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if a peculiar characteristic or unusual circumstance, relating only to that property, causes the zoning ordinance to impact more severely on the property than on surrounding parcels. *Cromwell, supra*, at 721. If the subject property is found to be unique, the hearing examiner may proceed to the second prong of the test. This involves a determination as to whether literal enforcement of the zoning ordinance, with regard to the unique property, would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property is unique. The parcel is a corner lot, and hence subject to two front yard setbacks. The required placement of the septic reserve area and well severely restricted the buildable area of the lot. This required placement of the home at the far rear of the parcel. Therefore, the home had to be constructed at an angle to meet all required setbacks. The construction of the home at an angle caused what would normally have been designated as a 40 foot side yard setback to end up as an 80 foot rear yard setback. Had the home been placed straight on the lot, the Applicants would not need a variance to construct the requested addition.

Having found that the subject property is unique, it must next be determined whether denial of the requested variance would create unreasonable hardship or practical difficulty for the Applicants. The Hearing Examiner finds that literal enforcement of the Code would result in practical difficulty in this case because the proposed location is the only practical place on the property where the requested addition can be constructed. If the variance is not granted, the Applicants will be unable to construct the proposed attached garage on their property, and will therefore be denied property rights commonly enjoyed by other homeowners in La Vista Manor Subdivision.

## **Case No. 5523 – Benny & Jane Walker**

Finally, the Hearing Examiner finds that the granting of the requested variance will not be substantially detrimental to adjacent properties, or materially impair the purpose of the Code or the public interest. Many other houses in the La Vista Manor Subdivision are larger in size, and have attached garages. The addition will actually bring the size of the Applicants home more into conformity with other larger homes in the neighborhood.

The Hearing Examiner recommends approval of the Applicants' request, subject to the following conditions:

1. The Applicants obtain all necessary permits and inspections for the proposed construction.
2. The Applicants not encroach further into the setback than the distance requested herein.
3. The Applicants shall plant evergreen trees across the rear property line. The trees shall be at least 4 feet in height at the time of planting. The Applicants shall submit a landscaping plan to the Department of Planning and Zoning for review and approval prior to the issuance of any permits.

Date: MARCH 23, 2006

REBECCA A. BRYANT  
Zoning Hearing Examiner

**Any appeal of this decision must be received by 5:00 p.m. on APRIL 20, 2006.**